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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [illegible]

HASKINS BROS. & CO., A CORPORATION, *Petitioner*,

v.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA, *Respondent*.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

PETITION.

WILLIAM STANLEY,
Attorney for Petitioner.

ALFRED C. MUNGER,
J. EDWARD BURROUGHS, JR.,
WILLIAM G. GASSAWAY,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION.

Haskins Bros. & Co., a body corporate, prays that a writ of certiorari issue to bring before this Court the suit now pending in the United States Circuit Court of Appeals for the Eighth Circuit, there entitled "Haskins Bros. & Co., a corporation, appellant, against George W. O'Malley, individually and as Collector of Internal Revenue for the Dis-

trict of Nebraska, appellee, No. 10823, at law", which has not been submitted to, heard or decided by that Court.

OPINION BELOW.

The order of the District Court of the United States for the District of Nebraska, Omaha Division, sustaining the respondent's demurrer to the petitioner's petition, and dismissing said petition, is printed in the record at p. 24.

JURISDICTION.

The order sustaining the demurrer and dismissing said petition was entered on December 16, 1936. Appeal was taken and allowed and the case was docketed in the United States Circuit Court of Appeals for the Eighth Circuit on January 2, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13th, 1925.

QUESTION PRESENTED.

Whether, under the circumstances disclosed in the present case, the District Court of the United States for the District of Nebraska, Omaha Division, was in error in sustaining respondent's demurrer and dismissing petitioner's petition for the refund of certain taxes collected from petitioner by virtue of Section 602½ (a) of the Revenue Act of 1934.

STATUTES AND OTHER MATERIALS INVOLVED.

The Revenue Act of 1934, Section 602½ (a) (c. 277, 48 Stat. 680), is set forth in the appendix, *infra*, pp. 18 and 19.

STATEMENT.

Petitioner is engaged in the manufacture of soap and allied products, and owns and operates for this purpose a plant at Omaha, Nebraska, where the processes of manu-

facture are carried on exclusively intrastate in character within the limits of said state. In the course of its business petitioner uses large quantities of coconut oil wholly of Philippine production, which use constitutes the first domestic processing of coconut oil under the terms of Section 602½ (a) of the Revenue Act of 1934. Under this section there is imposed a processing tax of 3c per pound, to be paid by the processor upon the first domestic processing of coconut oil wholly the product of the Philippine Islands. During the months of June, July, August, September and October, 1935, petitioner used in the manufacture of soap intended for sale, 894,767⅓ pounds of coconut oil wholly the production of the Philippine Islands, the tax upon which, pursuant to the terms of said Section, amounted to $26,843.02, and payment of said sum was made by petitioner to the respondent, the Collector of Internal Revenue for the District of Nebraska, on July 31st, August 31st, September 30th, October 31st and November 30th, all in 1935.

On January 13th, 1936, petitioner filed with the Bureau of Internal Revenue of the United States, its claim for the refund of said sum of $26,843.02 (R. p. 16), which claim was rejected and denied by the Commissioner of Internal Revenue of the United States on the 5th day of February, 1936 (R. p. 20), and on November 12th, 1936, petitioner filed its petition in the District Court of the United States for the District of Nebraska, Omaha Division, against the respondent for the recovery of said sum of $26,843.02, with all accrued interest due thereon, for the reason that said sum had been illegally collected from petitioner by the respondent on account of the unconstitutionality of said Section 602½ (a), under and by virtue of which said sum had been exacted, as aforesaid.

In support of the judgment prayed for, petitioner alleged that petitioner is now, and was at the time of said payment, and for many years prior thereto, engaged in the business of manufacturing soaps and allied products, exclusively at Omaha, Nebraska, as hereinbefore set forth, and that, ac-

cordingly, the use of Philippine coconut oil in such manufacture was exclusivly intrastate in character, within the limits of the State of Nebraska. That Philippine coconut oil was an ingredient of a large proportion of its soaps, for which there was no substitute. That said coconut oil, including that on which the said sum of $26,843.02 was exacted from the petitioner as aforesaid, is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers, the dealers place the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other users, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. That because of circumstances beyond its control, petitioner was compelled to meet the competitive prices prevalent in the soap industry, and therefore, was unable to recover any of the exactions collected from it under said Section by increasing prices and thereby passing on to others the amount of such exactions. Petitioner also alleged it had been unable to recover said exactions or any parts thereof by reducing the prices paid for raw materials, wages and other costs of operation. That said tax of 3c per pound imposed by said Section constitutes about 30 per cent of the total manufacturing costs of petitioner's coconut oil soaps, and previous to the enactment of said Section, petitioner had been able to conduct its business at a substantial profit, but since the enactment of said Section, it has suffered operating losses, and has been unable to conduct its business at a profit.

Petitioner further alleged that by the Philippine Independence Act (Act of March 24, 1934, 48 USCA, #1231 to 1247) Congress, upon certain conditions in said Act expressed, provided over a period of years for the grant of independence to the Philippine Islands and that the Philippine Islands at the time of the institution of this suit had complied with all the requisites of said Act necessary to eventually perfect its independence, and that petitioner had been informed and believes that the Philippine Islands are no longer an insular possession of the United States but are now a separate nation and commonwealth, with its own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States. That as required by said Section, the said sum of $26,843.02, and all other sums paid by petitioner upon the processing of said coconut oil since the enactment of said section, and all sums similarly paid by other soap manufacturers and other processors of said coconut oil, had been placed in a separate fund held exclusively for the benefit of and to be paid over in its entirety, to the Treasury of the Philippine Islands, and that said sum to be so paid over was in excess of $30,000,000.00. That the object and purpose of Congress in the enactment of said Section was not to raise revenue which which to pay the debts, or provide for the common defense or general welfare of the United States, but that said object and purpose of Congress was to regulate the volume of production and the selling prices of certain vegetable oils and fats produced within the United States, by compelling soap manufacturers and all other manufacturers using coconut oil, to substitute said domestic vegetable oils in place of coconut oil in the manufacture of their soaps, and that said section was a statutory plan to regulate intrastate production and manufacture. That all of the provisions thereof relating to the tax on said coconut oil, including the holding of the proceeds thereof as a separate fund, the payment of such separate fund to the Treasury of the Philippine Islands, and the

cessation of such payment after the Philippine Government provides by law for a subsidy to producers of copra and coconut oil are inseparable, and are interrelated, intertwined, interdependent and integrated parts of one scheme of legislation, not to raise revenue, but to further the general plan of regulation of agriculture and manufacturing incorporated in the Act of May 12th, 1933, c. 25, 48 Stat. 31, known as the "Agricultural Adjustment Act of 1933," and at the same time to create a fund out of such illegal exactions to be paid to the Philippine Government, provided the Philippine Government did not grant a subsidy to be paid to the producers of coconut oil or its allied products. That the proceeds secured under the Act were granted to the Philippines to compensate them for the breach of the agreement between the two countries permitting the entry of Philippine coconut oil products into the United States free from the imposition of a duty or other restrictions for a limited number of years after independence was granted to the Philippine Islands.

Petitioner further alleged that all of said sum of $26,843.02 collected by the respondent from the petitioner was collected under and by virtue of the express provisions of Subsection (f) of said Section 602½ (a), making other provisions of the revenue laws (including penalties) applicable under threats of penalties, interest, imposition of a lien against petitioner's properties, and distraint or other forcible collection proceedings, and because of such threats, duress, and coercion, petitioner paid said sum of $26,843.02, to the respondent as aforesaid, as collector of Internal Revenue.

The respondent filed a demurrer to said petition on December 9th, 1936, upon the following grounds:

> "1. That said complaint fails to allege facts sufficient to constitute a cause of action.
>
> 2. That said complaint fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly

assessed and collected under valid and constitutional laws of the United States."

The District Court, on December 16th, 1936, the petitioner not desiring to plead further, sustained the demurrer and dismissed said petition, and petitioner, on December 24th, 1936, appealed to the United States Circuit Court of Appeals for the Eighth Circuit, and said appeal is now pending in said Court.

SPECIFICATION OF ERRORS TO BE URGED.

Each of the errors assigned by petitioner (R. 25-28) in support of its appeal to the Circuit Court of Appeals for the Eighth Circuit will be relied upon in this Court.

REASONS FOR GRANTING THE WRIT.

I.

The sole question presented in this case is the constitutionality of those portions of Section 602½ (a) of the Revenue Act of 1934, relating to the processing tax on Philippine coconut oil. Since the enactment of said Section 602½ (a), more than $40,000,000[1] has accumulated by virtue of the tax placed upon Philippine Coconut Oil by said section, and is now being held as a separate fund to be paid to the Treasury of the Philippine Islands.

That part of Section 602½ (a) providing for a tax on Philippine Cocoanut Oil has been the subject of much litigation. Numerous injunction suits have been filed, but the constitutionality of said Section has never been determined by the highest Courts of this land, and is consequently a matter of much conjecture. In two of these cases the District Courts held said Section to be unconstitutional and granted permanent injunctions against the collection of taxes provided for under said Section. Both of these

[1] The original petition filed in the District Court stated that this sum was $30,000,000.00. Now we are informed that it has increased to over $40,000,000.00.

judgments were reversed by the Circuit Court of Appeals exclusively upon the question of remedy, and the appellate Court, accordingly, did not go into the constitutionality of said Section. Certiorari to the Court of Appeals in these two cases was petitioned for in this Court and denied.

In three other injunction cases, the District Court refused injunctions exclusively upon the question of the remedy without going into the constitutional questions. In two of these latter three cases, appeals were taken to the Circuit Court of Appeals, wherein the cases are now pending. In addition to these injunction cases, numerous other similar cases wherein temporary restraining orders have already been issued are now pending in the District Courts throughout this Country.

One injunction case was brought in the District of Columbia to enjoin the payment over to the Treasury of the Philipine Islands of the proceeds collected under said Section. The Lower Court dismissed the bill of complaint, and the United States Court of Appeals for the District of Columbia affirmed the ruling of the Lower Court, exclusively on remedial grounds, and without any ruling on any constitutional issue, and a writ of certiorari to the appellate Court was petitioned for in this Court and denied.

In addition to the instant case, another case involving a refund entitled "The Cincinnati Soap Company, a corporation, against The United States of America", was brought in the United States District Court for the Southern District of Ohio, Western Division, and a demurrer to the same sustained by the latter Court whereon an appeal has been entered to the United States Circuit Court of Appeals for the Sixth District, and your petitioner has been advised that, pending such appeal, The Cincinnati Soap Company has petitioned this Court to issue a writ of certiorari to the United States Circuit Court of Appeals for the Sixth District, to review the judgment of the District Court.

The doubt as to the constitutionality of said section effects the relationship of this Country with a foreign Gov-

ernment, the Philippine Islands, who claim that by virtue of said Section, they are entitled to an immediate payment of all funds accumulated by the exaction of said tax, and have made demand upon the proper officials of the United States for the payment of said funds, and it is to be presumed that they have never been paid over to the Treasury of the Philippine Government, because of the grave question as to whether that part of Section 602½ (a) pertaining to the tax on Philippine Coconut Oil is constitutional. It is submitted, this case presents a matter of such importance as to call for the exercise by this Court of its supervisory powers, for the ultimate determination of the questions presented by the present suit will greatly clarify the relationship existing between the Governments of the United States and the Philippine Islands. The importance of the constitutionality of this Section to the Philippine Islands can be readily seen, when one realizes that the bonded debt of the Philippine Islands is only $48,000,000, a sum slightly in excess of the amount so far collected by virtue of the tax on Philippine coconut oil.

In addition to quieting litigation in Court, and to clarifying the relationship existing between the Governments of the United States and the Philippine Islands, public interest will be greatly promoted by the prompt determination by this Court of the question involved. This is illustrated by the facts concerning the petitioner. The tax has a destructive effect on the possibility of profit by many soap manufacturers, and is, owing to doubts about its constitutionality, a disturbing, dislocating and confusing element in the soap industry, and no doubt in other industries which use coconut oil.

II.

The order of the District Court of the United States for the District of Nebraska, Omaha Division, in sustaining the demurrer and dismissing said petition, was clearly in error, for such order is, in effect, a determination that said

tax was assessed and collected under a valid and constitutional law of the United States, and it is submitted that said Section 602½ (a), insofar as the tax on Philippine coconut oil is concerned, is not a true revenue measure, but an unconstitutional exaction for the following reasons:

(a) *Only a cursory examination of Section 602-1/2 (a) of the Revenue Act of 1934 is necessary to discover that it is merely the Agricultural Adjustment Act in miniature and therefore unconstitutional under the Butler decision.* It provides, in part, as follows:

> "All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."

The real purpose of the act is to regulate agricultural production and prices with respect to certain commodities and this is shown upon its face; it embodies the same principle of agricultural control and regulation as was involved in the Agricultural Adjustment Act. It is a counterpart of and complementary to that Act, and in its effects, and in its effort to raise the price of agricultural products, it may be said to be the Agricultural Adjustment Act in miniature, and is completely controlled and clearly unconstitutional under the decision of the *United States* v. *Butler*, 297 U. S. 1. It was designed to stimulate the business of the American farmer in oils and fats that compete with those of the Philippine Islands. This purpose is obvious. Congress took pains to see that no part of the funds raised by the act should find its way to the Philippine producers of coconut oil. Congress in the passage of this statute was attempting, not to raise revenue for the purpose of defraying

the ordinary expenses of the government, but to restrict and limit the importation of coconut oil into the United States by means of a heavy excise tax upon the use of such oil by American processors. Obviously, if the taxes so collected were given to the Philippine Government and by that Government distributed to the coconut oil producers on the Islands, then the eventual effect would be the same as if no tax had been imposed. Under such circumstances, the Philippine producers of coconut oil would be in a position to reduce the price of the oil to the American manufacturer by the amount of the tax, for the reason that the tax would ultimately be refunded to them. Because of this possibility, Congress prohibited the Philippine Government from subsidizing the producers of coconut oil and allied products, thereby attempting to place the Philippine producers at a distinct disadvantage in dealing with the American producers of substitutes for this product.

When the act was up for final passage by the Senate the following discussion between Senators Norris, Connally, Borah, and Reed clearly demonstrates the real purpose of the act:

> Senator Norris: There has been presented by the committee amendment a very serious question in which the farmers of the United States are particularly interested. They are all very much worried about bringing into this country copra and coconut oil, which interferes with the sale of fats and oils of all kinds produced here in America from cattle, hogs, and so forth. • • •
>
> Within the last year or so the administration has started on a farm-relief program. We have limited the production of all, or practically all, farm products. The farmer, concerned with that limitation, finds that fats and oils imported from the Philippine Islands do not have to pay a tax under the tariff law, and therefore, without any tax of any kind levied upon them, come in competition with the fats and oils produced in this country. • • •
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> • • • • • • • • • •

Mr. President, my amendment in the first place provides that the revenue derived from this tax shall not be covered into the Treasury of the United States but shall be held in a separate fund and paid to the Philippine Government. The objection first raised was and is that the Philippine government could still grant a bonus or subsidy in the same amount to the producers of coconut oil and copra in the Philippines, and thus nullify the effect of our tax. In other words, if the Philippine government should do that, our tax would be absolutely of no effect so far as the importation of coconut oil and copra from the Philippines are concerned. It would not help us and it would not help the American farmer. The Philippine producer of the coconut oil and copra would be able, with a bonus of the same amount as the tax, to sell as he did before, and the American farmer would get no benefit from the tax.

To meet that objection, it is provided in my amendment that if the Philippine government at any time shall grant a bonus or subsidy for the production of coconut oil or copra, then the provision will at once become null and void and of no effect, and the producers will stand under the amendment of the committee just as it was reported.

• • • • • • • • •

Senator Connally: If that be true, I cannot see why the amendment would not have the effect of aiding the domestic producer, because the tax would be paid, and it is immaterial from his viewpoint what is done with it, whether it is thrown in the sewer or given to the Philippine government.

• • • • • • • • •

Senator Borah: Mr. President, I found last night that the A. A. A. Act expressly exempts the Philippine Islands.

Senator Norris: Yes; it is done by express statute. I have it here on my desk.

Senator Reed: We could extend the A. A. A. by an amendment to cover the Philippines.

Senator Norris: I think probably we could.

Senator Borah: That is really what we are doing in this bill.[1]

Therefore the decision of this Court in the Butler case applies to this act, when the Court said:

> "The Act invades the reserved rights of the States. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end."

(b) *Section 602½ (a) of the Revenue Act of 1934 also offends the Constitution because the petitioners are taxed for the support of the Philippine Islands.* The disposition of the funds derived from the tax plainly violates the conception of a true tax. The proceeds of the tax never reach the General Fund of the Treasury of the United States for the reason that they are isolated and segregated in advance and held as a separate fund to be turned over to the Philippine government for its sole benefit, with but one negative restriction. The United States retains no affirmative control whatever over their spending or disposition, and to speak of this exaction as a revenue measure does violence to the very provisions of the Act itself, an act from which not a dollar of revenue will be derived for the support of the United States.

Even before the passage of the Philippine Independence Act Congress could not lay taxes for the general welfare of the Philippine Islands, as they have never been a part of the United States within the meaning of Article 1, Section 8, Clause 1 of the Constitution.[2] In *Downes* v. *Bidwell,*

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[1] Pages 6572 to 6575 of the Congressional Record—Senate—73rd Congress.

[2] This was called to the attention of the Senate when the Act was under discussion by Senator Reed, who said: "I do not believe that the Federal Government has the constitutional power to levy a tax for the benefit of any government, whether it is the government of the City of Omaha, or the government of the Philippine Islands, or a government set up under any other system."

182 U. S. 286, the Court held that Porto Rico was a territory appurtenant and belonging to the United States, but not a part of the United States within the Revenue Clauses of the Constitution, and from *The Case of the 14 Diamond Rings*, 183 U. S. 180, it is clear the decision in the of *Downes* v. *Bidwell* applied with equal force to the Philippine Islands as to Porto Rico.

The case at bar also may be said to fall within the doctrine established in *Citizens Savings and Loan Association* v. *Topeka*, 20 Wall. 655; *Parkersburg* v. *Brown*, 106 U. S. 487; *Cole* v. *LaGrange*, 113 U. S. 1; and *Ochoa Hernandez* v. *Morales*, 230 U. S. 139, as Section 602½ (a) is an expropriation of money from one group for the benefit of another, and Congress has not the power to tax one class for the benefit of another.

Congress, unquestionably, has the right to levy a processing tax on coconut oil, but in levying such a tax, it is limited by Article 1, Section 8 of Clause 1 of the Constitution, wherein Congress is given the power "to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States," and as said in *U. S.* v. *Butler*, *supra*, "a tax in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. • • • " Quoting from *Smith* v. *Turner*, 7 Howard 446 (Passenger cases), "Nor has Congress power to lay taxes to pay the debts of a state, nor to provide by taxation for its general welfare. Congress may tax for the Treasury of the Union and here its power ends," and *Story*, Volume 1, Chapter XIV, Paragraph 922, says:

> "A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defense and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defense proposed

by a tax be not the common defense of the United States, if the welfare be not general but special or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defense, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mohammedanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles."

(c) *Section 602½ (a) of the Revenue Act of 1934 may be held unconstitutional because the amount of the tax is excessive.* It is submitted that the exaction here involved of three cents per pound is so grossly excessive that it amounts to the taking of taxpayers' property without due process of law in violation of the Fifth Amendment. Coconut oil before the passage of Section 602½ (a) sold for three cents a pound upon the United States market, and Section 602½ (a) imposes a one hundred per cent tax, a tax which doubled the market value of the product. The record shows that prior to the passage of said Section 602½ (a) the petitioner was able to make a substantial profit in his business. A taxpayer may be relieved from what amounts to confiscation in the guise of taxation. In *Great Northern Railway Co.* v. *Weeks, et al.*, 297 U. S. page 135, the court struck down a state tax upon railroad properties because the rate fixed was so excessive as to amount to a taking of the property without due process of law. While in that case state taxation was involved, from the opinion it is clear that the same principle is applicable to Federal taxation, and insofar as due process of law is concerned, the principles that apply under the Fourteenth Amendment to state legislation also apply to Federal taxation under the due process clause of the Fifth Amendment. *Heiner* v. *Donnan*, 285 U. S. 312.

CONCLUSION.

It is therefore respectfully urged that this case is such as to call for the exercise by this Court of its supervisory powers. The constitutionality of that part of Section 602½ (a) pertaining to the tax on Philippine coconut oil, has never been determined or passed upon by the highest Courts, nor have the highest Courts ever passed upon the constitutionality of any similar revenue measure, as Section 602½ (a) is dissimilar to any other revenue measure ever enacted by Congress. While the present suit is only to recover $26,843.02, with accrued interest thereon, a decision by this Court will have a far-reaching effect. It will greatly clarify the relationship between the United States and Philippine governments, it will be of great benefit to the soap manufacturers, and it should be of particular interest to every taxpayer within this Country, for not only will it determine the rights of petitioner to a refund of said $26,843.02, but will also determine the status of the immense sum collected by virtue of said Section, at this time in excess of $40,000,000, and increasing in size daily. The United States has no interest or title in this sum which is in excess of $40,000,000. It has not been collected and paid into the general Treasury as part of the revenue of the United States, and in no manner can the United States benefit by it. Your petitioner has been advised that the Comptroller General has approved payment of a part of this fund to the Treasury of the Philipine Islands, and it is only necessary for the Secretary of the Treasury and the Treasurer to sign the warrants in order for so much of said funds so approved for payment to leave the United States and become the property of the Philippine Islands, from whom they could not be recovered. Therefore, unless this Court takes jurisdiction over this case, and speedily determines the constitutionality of that part of Section 602½ (a) pertaining to the tax on Philippine coconut oil, the United States may suffer a loss of all funds collected by

virtue of said tax. Certainly a possible loss of such a huge sum of money should be of much concern to the United States Government and to the taxpayers of this Country.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, to review the judgment of the District Court of the United States for the District of Nebraska, Omaha Division, should be granted.

Respectfully submitted,

WILLIAM STANLEY,
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ALFRED C. MUNGER,
J. EDWARD BURROUGHS, JR.,
WILLIAM G. GASSAWAY,
Of Counsel.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.—(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal* oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the

*So in original.

producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.